

NWACC 504/ADA Student Complaint and Grievance Policy

NorthWest Arkansas Community College (NWACC) is committed to a policy of ensuring that no otherwise qualified individual with a disability is excluded from participation in, denied the benefits of, or subjected to discrimination in NWACC programs or activities due to his or her disability. NWACC is fully committed to complying with all requirements of the Americans with Disabilities Amendment Act of 2008 (ADA) and the Rehabilitation Act of 1973 (Section 504) and to providing equal educational opportunities to otherwise qualified students with disabilities.

The purpose of the NWACC 504/ADA Student Complaint and Grievance Policy is to provide prompt, equitable and orderly processes to resolve disability discrimination and harassment complaints and grievances by students at NorthWest Arkansas Community College. Any NWACC student who believes that he or she has been subjected to discrimination and harassment on the basis of disability or has been denied access or accommodations required by law will have the right to invoke this Complaint and Grievance Procedure. In general, this 504/ADA Student Complaint and Grievance Policy is designed to address the following types of concerns:

- 1) Disagreements or denials regarding requested services, accommodations, or modifications to NWACC practices or requirements
- 2) Alleged inaccessibility of an NWACC program or activity
- 3) Alleged harassment or discrimination on the basis of a disability
- 4) Any other alleged violations of the ADA and/or Section 504.

This Complaint and Grievance Procedure, however, is not intended to and will not supersede other NWACC policies and procedures which may exist for addressing alleged violations of the ADA and/or Section 504 or other issues of concern for which separate NWACC policies and procedures exist, e.g., grade appeals. Students are encouraged to consult with the Disability Resource Center (DRC) Director, the Title IX and ADA Compliance Officer, the Dean of Students or their respective designees regarding the most appropriate NWACC policy or procedure to address a particular concern.

Whenever discrimination or harassment based on a disability has been found to occur, NWACC will act to end the discrimination or harassment, prevent its recurrence, and remedy its effects on the victim and the college community.

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Definitions

Discrimination (general definition): Actions that deprive members of the community of educational or employment access, benefits or opportunities. Any distinction, preference, advantage for or detriment to an individual compared to others that is based upon an individual's actual or perceived gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion or sexual orientation that is so severe, persistent or pervasive that it unreasonably interferes with or limits a person's ability to participate in or benefit from the college's educational programs or activities. There can be no discrimination related to pregnancy, child birth, false pregnancy, termination of pregnancy or recovery.

Discriminatory Harassment: Detrimental action based on an individual's actual or perceived gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation or other protected status that is so severe, persistent or pervasive that it unreasonably interferes with or limits a person's ability to participate in or benefit from the college's educational programs or activities.

Disability: A person with a disability is generally defined as someone who (1) has a physical or mental impairment that substantially limits one or more "major life activities," (2) has a record of such an impairment, or (3) is regarded as having such an impairment.

Reasonable Accommodation: In the context of higher education, it is easier to define what is not reasonable and assume that if the accommodation needed does not clearly fall under those

guidelines, it is probably reasonable. There are three kinds of accommodations that are not considered reasonable:

- 1) It is not a reasonable accommodation if making the accommodation or allowing participation poses a direct threat to the health or safety of others;
- 2) It is not a reasonable accommodation if making the accommodation means making a substantial change in an essential element of the curriculum (educational viewpoint) or a substantial alteration in the manner in which you provide your services; and
- 3) It is not a reasonable accommodation if it poses an undue financial or administrative burden. In the academic context, an accommodation is not reasonable if it means making a substantial change in an essential element of a course or a given student's curriculum. It is the institution's responsibility to demonstrate both that the change requested is substantial and that the element targeted for change is essential to the conduct of the course or curriculum. Whether or not the change requested is substantial/essential may be a judgment call on behalf of the administrators and service providers charged with making those decisions but it is not unusual for the decision to be a fairly logical one.

Hostile Environment: Any situation in which there is harassing conduct that is sufficiently severe, pervasive and objectively offensive that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

504/ADA Student Complaint and Grievance Procedures

Regardless of the specific complaint or grievance procedure invoked by a student, all complaints and grievances must be filed within 45 business days of the event or action giving rise to the student's concern(s). As an initial matter, all complaints and grievances will be reviewed to determine whether they are submitted within a timely manner and/or whether they contain all required information. NWACC will not review a grievance which is untimely or fails to contain all required information, including a clear statement of all grounds for the grievance. However, the Title IX and ADA Compliance Officer may extend the 45 business day period if good cause to do so is shown. To facilitate a clear and prompt resolution, once initiated, a grievance will not be expanded beyond the issues presented in the student's initial complaint.

NWACC reserves the right to redirect a grievance to the proper grievance procedure or to any other appropriate review procedure.

I. Informal Resolution

a) Self-Advocate

NWACC encourages students who are registered with the Disability Resource Center to resolve concerns that affect their college experience as informally as possible because students benefit when they learn to advocate for themselves. In some cases, students may discuss a concern directly with the staff member, instructor, program coordinator, department chairperson, or division dean involved to reach an informal resolution. However, if a resolution is not obtained, the student may seek the assistance of the Disability Resource Center as described in b) below.

b) Disability Resource Center Assisted

In addition to self-advocating, to resolve a complaint without filing a formal grievance, a student may also contact the Disability Resource Center (DRC) Director or his or her designee. That contact should be made as soon as possible after the event or action giving rise to the student's concern(s) and within 45 business days of its occurrence. Within ten (10) business days of being contacted by the student, the DRC Director or his or her designee will discuss the issue with the student and other parties involved, either individually or collectively, in an effort to resolve the issue. Other parties could consist of faculty, staff, administrators, and other students. The DRC Director or his or her designee will notify the student, either verbally or in writing, of the determination of the informal complaint outcome.

If the complaint is not resolved at this first step, or if the complaint is so serious or controversial that it requires further investigation, the student may proceed in completing a formal grievance.

II. Formal Grievance Procedure

To complete a formal grievance, students should pursue the appropriate procedure detailed below as determined by the nature of their concern. There is one process for grievances related to academic accommodations and services, and there is another for grievances related to discrimination or harassment based on a disability.

If a student is unsure as to which formal grievance procedure to follow, he or she may contact the DRC Director, the Title IX and ADA Compliance Officer, or the Dean of Students or their respective designees for guidance.

Essential Formal Grievance Information:

Regardless of which procedure is followed, the formal grievance should clearly and concisely describe the alleged incident(s), when and where it occurred, and the desired remedy sought. The formal grievance should be signed by the student or sent as an email using the student's NWACC e-mail account. The grievance should contain the name and all contact information for the student. Any supporting documentation and evidence should be referenced within the body of the formal grievance.

The student's supporting documentation should clearly demonstrate any informal efforts the student has taken to resolve the issue(s) with the person involved. This includes names, dates and times of attempted or actual contact along with a description of the discussion and the manner of communication made in the course of each effort. If contacting the person involved is impracticable, the student should state the reasons why.

Students should be aware that the person reviewing the formal grievance may consider issues such as but not limited to whether:

- Adequate documentation was provided;
- The student's documentation supports a determination of eligibility;
- Requested accommodations were reasonable;
- The impact of the requested accommodations constituted a fundamental modification of curriculum;
- The student, faculty, and/or DRC staff followed appropriate procedures, including timeliness for requests and responses.

Although NWACC strongly encourages submission of grievances in writing, formal grievances can be communicated in person or orally to the Director of the Disability Resource Center or the Title IX and ADA Compliance Officer. A written report will then be prepared for investigative purposes and for record keeping.

For ease of communication, there is a 504/ADA Student Grievance form which may be used for guidance when submitting a formal grievance. This form can be accessed online on the DRC webpage (https://www.nwacc.edu/web/lss_disability/disability.php) and may be submitted directly to the appropriate NWACC official or his or her designee as mentioned above.

The student may receive assistance and/or an accommodation in completing the form at the DRC, or by contacting the Title IX and ADA Compliance Officer, or the Dean of Students or his or her designee. However, the student is responsible to supply all essential information in the formal grievance in a timely way.

A. Formal Grievance Procedure for the Denial of Academic Accommodations and Services

This grievance process will apply to situations where a student has followed the established procedures, as identified on the DRC web page or by DRC staff, to request accommodations on the basis of a disability, either through an individual faculty member, administrator, or DRC staff, and the request has been denied or otherwise not provided.

Please note that grievances related to the denial of a request for a course substitution on the basis of disability are addressed separately. Procedures may be found on the DRC website.

- 1) The student initiates a formal grievance by contacting the DRC Director or his or her designee stating this intent and providing grievance information as to the nature and specific details of his/her grievance, i.e. "Essential Formal Grievance Information." The DRC Director or his or her designee will send the student a notice to acknowledge receipt of formal grievance.
- 2) The DRC Director or his or her designee will review the supplied information and/or other relevant information and will conduct an investigation into the matter.
- 3) The DRC Director or his or her designee will make a decision within 30 business days after receiving the student's grievance, or as soon as possible thereafter. Further, the DRC Director or his or her designee will provide the student with a copy of the Letter of Determination and take any steps necessary to implement the decision, including, but not limited to, providing a copy of the Letter of Determination to appropriate NWACC officials.

Appeal:

If the student who has filed the grievance does not agree with the finding, he or she may appeal the decision if it can be found that the finding was based on an error. Because the original finding is presumed to have been decided reasonably and appropriately, the party requesting an appeal must show error. The ONLY grounds for appeal are as follows:

- a) A procedural or substantive error occurred that significantly impacted the decision (e.g. substantiated bias, material deviation from established procedures, etc.).
 - b) New evidence has been found which was unavailable during the original decision-making process that could substantially impact the original finding. A summary of this new evidence and its potential impact must be included.
- 1) The student must submit the appeal to the Title IX and ADA Compliance Officer in written form, such as by email, facsimile, hand delivered notification, or postal delivery. The written appeal must include specific facts and grounds which form the foundation for the appeal, the specific basis of the student's disagreement with the DRC Director's Letter of Determination, and all other relevant information. Upon receiving a timely appeal, the Title IX and ADA Compliance Officer or his or her designee will send the student a notice to acknowledge receipt of written appeal.
 - 2) The Title IX and ADA Compliance Officer or designee will review the supplied written and/or other relevant materials. The Title IX and ADA Compliance Officer and the Vice President for Learner Support Services or their respective designees will consult with each other prior to making a decision regarding the appeal.
 - 3) The Title IX and ADA Compliance Officer or his or her designee will make a decision regarding the appeal within five (5) business days of receiving the appeal or as soon as possible thereafter, and will distribute a written decision to the affected parties. The decision of the Title IX and ADA Compliance Officer or his or her designee will be the final decision of the College.

B. Formal Grievance Procedure for Other Student Grievances Pertaining to Disabilities

This grievance process will apply to all other grievances arising from or relating to alleged discrimination or harassment on the basis of a disability. All effort will be made to make a determination in no more than 60 calendar days of filing a formal grievance.

The student initiates a formal grievance by contacting the Title IX and ADA Compliance Officer or deputy, who is designated to formally oversee student grievances, address inquiries and coordinate NWACC's compliance efforts regarding student grievances related to discrimination and harassment. Additionally, the Title IX and ADA Compliance Officer or deputy will send the student a notice to acknowledge receipt of the formal grievance.

Investigation:

- 1) Upon receipt of a grievance, the Title IX and ADA Compliance Officer or his or her designee will open a formal case file and notify the Chair of the Investigation and Hearing Board. The Chair of the Investigation and Hearing Board will assign 2– 3 members of the Board to serve as the Investigative Team, who will conduct the investigation.
- 2) The Chair of the Investigation and Hearing Board will confer with the Title IX and ADA Compliance Officer on interim action, accommodations for the grievant, or other necessary remedial short-term actions. The Title IX and ADA Compliance Officer will apprise the Vice President for the appropriate division of the grievance, or if the grievance is against a student, the Vice President for Learner Support Services.
- 3) The Investigative Team will:
 - a) Be staffed with 504/ADA trained faculty/staff and administrators;
 - b) In coordination with the campus Title IX and ADA Compliance Officer , initiate any necessary remedial actions;
 - c) Determine the identity and contact information of the grievant;
 - d) Identify the policies allegedly violated;
 - e) Conduct an immediate initial investigation to determine if there is reasonable cause to charge the individual(s) alleged to have committed discrimination or harassment, and what policy violations should be alleged as part of the complaint;
 - f) If there is insufficient evidence to support reasonable cause, the grievance should be closed with no further action;
 - g) Meet with the grievant to finalize the grievance;
 - h) Prepare the notice of charges on the basis of the initial investigation;

- i) Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses, who may be given notice prior to or at the time of the interview;
 - j) Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
 - k) Make a finding on the case, based on a preponderance of the evidence which indicates that a policy violation has or has not occurred;
 - l) Present the findings to the individual(s) alleged to have committed discrimination or harassment, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
 - m) Share the findings and update the student who filed the grievance on the status of the investigation and the outcome.
- 4) Where the findings indicate that the alleged discrimination or harassment has not occurred, the investigation should be closed. The student who filed a grievance may request from the Title IX and ADA Compliance Officer an extraordinary decision to refer the grievance to a hearing, which will only be granted by the Compliance Officer in exceptional circumstances.
- 5) Where the findings indicate that the alleged discrimination or harassment has occurred, and the respondent(s) accepts the findings that s/he violated college policy, an appropriate sanction will be imposed. If the complaint is against a student the sanction will be determined by the Vice President of Learner Support Services in consultation with the Title IX and ADA Compliance Officer. If the complaint is against an NWACC employee, the Vice President for the appropriate division in consultation with the Title IX and ADA Compliance Officer will determine the sanction. NWACC will act to end the discrimination, prevent its recurrence, and remedy its effects on the person who filed the complaint and on the NWACC community.
- 6) Following the findings, the Title IX and ADA Compliance Officer will distribute a written Letter of Determination to the affected parties.

Hearing:

- 1) In the event that the individual(s) alleged to have committed discrimination or harassment rejects the findings in part or entirely, the Chair of the Investigation and Hearing Board will

convene a hearing under its respective procedures to discuss the contested aspects of the formal grievance. At the hearing, the findings of the investigation will be admitted, but the hearing board is not bound by the findings of the Investigation Team. The Investigation Team may give evidence at the hearing. The hearing will determine whether it is more likely than not that a violation of the policies has occurred forming the basis of the charge. The goal of the hearing is to provide an equitable resolution via an equitable process, respecting the civil and legal rights of all participants.

- 2) When the hearing board determines that a violation has occurred, it will recommend appropriate sanctions for the violation. The Vice President for the appropriate division of the grievance, or if the grievance is against a student, the Vice President of Learner Support Services, will impose appropriate sanctions for the violation after consultation with the Title IX and ADA Compliance Officer. NWACC will act to end the discrimination, prevent its recurrence, and remedy its effects on the student who filed the grievance and on the NWACC community.
- 3) Following the hearing, the Chair of the Investigation and Hearing Board will send a second written Letter of Determination to the affected parties.

Appeal:

Sanctions imposed by the hearing board are implemented immediately unless the party determining the sanction stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

Appeals Following an Investigation:

In cases where the individual(s) accused of wrongdoing accepts the findings of discrimination or harassment after the investigation, those findings cannot be appealed. Although the findings cannot be appealed, the sanctions that have been imposed post-investigation can be appealed by any party according to the grounds below by contacting the Title IX and ADA Compliance Officer within five (5) business days following receipt of the Investigation and Hearing Board's written Letter of Determination.

Appeals Following a Hearing:

After the hearing, either the complainant(s) or the respondent(s) may appeal the findings and/or sanctions only under the grounds described below. All sanctions imposed by the original

hearing body will be in effect during the appeal. A request may be made to the Title IX and ADA Compliance Officer for special consideration in exigent circumstances, but the presumptive stance of the institution is that the sanctions will stand. In the event that either the complainant(s) or the respondent(s) rejects the findings in part or entirely, he/she may seek an appeal by contacting the Title IX and ADA Compliance Officer within five (5) business days following receipt of the Investigation and Hearing Board's written Letter of Determination.

Appeal Procedures:

Any party who files an appeal must do so in writing to the Title IX and ADA Compliance Officer. Acceptable means of notification include email, facsimile, hand delivered notification, or postal delivery. The Title IX and ADA Compliance Officer will share the appeal with the other concerned parties and will draft a response memorandum, which will also be shared with all concerned parties. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the decision is final.

The party requesting appeal must show error as the original finding and sanction are presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:

- 1) A procedural or substantive error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.);
- 2) New evidence has been discovered that could substantially impact the original finding or sanction and which was unavailable during the original hearing or investigation. A summary of this new evidence and its potential impact must be included; or
- 3) The sanctions imposed are substantially disproportionate to the severity of the violation.

If the Title IX and ADA Compliance Officer determines that new evidence should be considered, he or she will return the grievance to the Investigation and Hearing Board to reconsider in light of the new evidence only. The reconsideration of the Investigation and Hearing Board is not appealable.

If the Title IX and ADA Compliance Officer determines that a material procedural or substantive error occurred, it may return the grievance to the Investigation and Hearing Board with instructions to reconvene to correct the error. The results of a reconvened hearing cannot be appealed.

In rare cases, where the procedural or substantive error cannot be corrected by the Investigation and Hearing Board, as in cases of bias, the Title IX and ADA Compliance Officer may order a new hearing on the complaint with a new body of Investigation and Hearing Board members. The results of a new hearing can be appealed once on the three applicable grounds for appeals.

If the Title IX and ADA Compliance Officer determines that the sanctions imposed are disproportionate to the severity of the violation, the Title IX and ADA Compliance Officer will return the grievance to the Vice President for the appropriate division of the grievance, or if the grievance is against a student, the Vice President of Learner Support Services, which may then increase, decrease or otherwise modify the sanctions. This decision is final.

The appeal procedure and determination will typically be completed within 20 business days.

The procedures governing the hearing of appeals include the following:

- All parties should be informed in a timely manner of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the original hearing body for reconsideration (remand) should be pursued;
- Appeals are not intended to be full re-hearings of the complaint (*de novo*). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal;
- The Chair of the Investigation and Hearing Board will render a written decision on the appeal to all parties within ten (10) business days, or as soon as possible thereafter from hearing of the appeal. The committee's decision to deny appeal requests is final.

III. Complaint and Grievance Process Provisions

Time Periods

For purposes of calculating all time periods set forth in this Complaint and Grievance Policy, a business day is defined to mean normal operating hours, Monday through Friday, excluding recognized national and state holidays and NWACC closings.

Timelines may be modified in cases where information is not clear, judged to be incomplete, relevant parties are not available for interview, and/or other related circumstances as may arise. In the event that this step is necessary, the DRC Director and/or Title IX and ADA Compliance Officer or their respective designees will notify the student who filed the grievance in writing within the set timeline.

No Retaliation

Retaliation against any person who files a complaint of discrimination, participates in an investigation, or opposes a discriminatory employment or education practice or policy is prohibited by NWACC policy and federal and state law. A person who believes retaliation has occurred should notify the Title IX and ADA Compliance Officer as soon as possible.

False Reports

NWACC will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

OCR Complaint

Although students are encouraged to attempt to resolve complaints pertaining to disabilities by utilizing this Grievance Procedure, they have the right to file a complaint directly with the U.S. Department of Education, Office for Civil Rights (OCR) (Dallas regional office). Information regarding applicable timelines and procedures is available from OCR.

Effective Date

This Complaint and Grievance Policy will be effective upon formal adoption. NWACC reserves the right to make changes and amendments to this policy and procedure as needed, with appropriate notice to the community. Please check the NWACC Disability Resource Center webpage at https://www.nwacc.edu/web/lss_disability/disability.php for updated/amended Complaint and Grievance Procedures.

Committee Summary:

As a Committee, we believe that we have reviewed the College's current ADA/504 Grievance policy and process considering the elements of equity, due process and thoroughness. Relevant information used in this review to draft a recommended policy is as follows: NWACC's current Complaint and Grievance Policies, the ADA/504 Grievance Policies of respected post-secondary institutions and the ATIXA Model Civil Rights Grievance and Investigation Process.

While we recognize that the ADA/504 Student Complaint and Grievance Policy should mirror current NWACC policies as closely as possible, we have made substantive changes to our current Student Complaint and Grievance Policy. Further, we have heavily incorporated language from the Title IX Model Civil Rights Grievance Process and fellow institutions into our 504/ADA Student Complaint and Grievance policy, to promote consistency among the two key areas of discrimination and harassment. As a Committee, we are recommending an ADA/504 Student Complaint and Grievance policy that could easily translate to the College's sister policies.

This summary is to afford College leadership the opportunity to be informed and consider our current complaint/grievance policies in conjunction with this proposal for the ADA/504 Grievance policy. Included in this summary are recognized internal processes/tasks to be performed, and strengths/limitations of this proposal.

Internal processes/tasks to be performed:

- Update the NWACC website immediately to reflect the correct contact information for the Title IX and ADA Compliance Officer.
- The Director for the Disability Resource Center, the Title IX and ADA Compliance Officer, and the Dean of Students or their respective designees will consult with each other to determine which procedure a reported concern needs to be directed toward for response.
- The current Judicial Committee will be renamed the Investigation and Hearing Board, and their charge will be expanded; training for the Board must be provided.
- The Investigation and Hearing Board will be Co-Chaired by the Director of Student Conduct and the Human Relations and Diversity Manager; the "lead" Chair for the

Investigation and Hearing Board will be determined by whether the person against whom the complaint is filed is a student or an employee.

- The Investigation Team will consist of 2-3 members; the Hearing Board will consist of 3-5 members.
- The Student Code of Conduct Policy and procedures must be updated to reflect these changes.
- A review of the Employee Code of Conduct and Ethics Compliance section of the Policy Manual must occur to ensure consistency.

Strengths:

The recommended policy:

- Specifically addresses a way for students to file complaints regarding all types of disability discrimination, i.e. accommodation concerns, differential treatment, harassment.
- Incorporates due process standards and provides for the prompt and equitable resolution of disability discrimination complaints.
- Promotes consistency among the ADA/504 and Title IX areas of discrimination and harassment.

Limitations:

The recommended policy:

- Is significantly different in structure from the College's current Student Complaint and Grievance Policy.
- Has a much shorter timeline for initiating a grievance (current policy – approximately two semesters; recommended policy – 45 business days).
- Incorporates Title IX Model Civil Rights Grievance Process language that may be difficult for some students to understand, and is tailored toward sexual discrimination/harassment.